IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos. 134 and 135 of 1995
Date of decision:21.11.2006

The Commissioner of Income tax Jalandhar

....Petitioner

versus

Sh.Mohinder Singh, Goldsmith, Baghapurana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, (for short, 'the Tribunal') arising out of its order dated 16.11.1992 in ITA Nos.1033 and 1044(ASR)/1990, for the assessment year 1986-87:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in vacating the entire addition of Rs.50,000/- in respect of assessment year 1986-87?"

In response to survey conducted by the Income Tax Department at the business premises of the assessee, the assessee surrendered a sum of Rs.50,000/- for being taxed vide letter dated 30.1.1986. The assessee, accordingly, deposited advance tax of Rs.4625/- on 31.1.1986. Subsequently, on 17.2.1986, the assessee resiled from the surrender on the plea that surrender was under duress. Rejecting this plea, the Assessing Officer made addition of Rs.50,000/- as unexplained investment in addition to the assessee's declared income from business as goldsmith. The appellate

authority partly accepted the stand of the assessee on the ground that construction of the house in which investment was made by the assessee, had taken place prior to 31.3.1985 and not in the accounting year relevant to the assessment year in question. This view was upheld by the Tribunal with the modification that the claim of the assessee was accepted in entirety. The Tribunal observed:-

> "After hearing the parties and perusing the statement dated 16.9.1989 and further enquiry directed by the Assessing Officer in relation to which report was also submitted on 18.9.1989 (Photo copy given at pages 1 to 5 of the paper book), it clearly comes out that the final report obtained by the ITO indicated that the house had been constructed before 31.3.1985 and that the assessee had only spent Rs.4000/- which amount he was specifically able to explain. In such context, the ground No.1 of the Revenue's appeal becomes important and reproduced as follows:-
>
> > "1. On the facts and in the circumstances of the case, the Ld. Deputy Commissioner of Income-tax (Appeals) has erred in deleting the addition of Rs.20,000/- by holding that the cost of plot of Rs.20,000/- included in the total cost of construction of Rs.85000/- when on the contrary, the assessee admitted before the ITO that "out of total investment in construction of Rs.85000/- upto 31.3.1985 he spent only Rs.4000/-"
>
> From the above, it is clear that as per the Department itself the construction in relation to which addition came to be made had taken place upto 31.3.1985 and, therefore, there could be said to be no cause of action for making any addition in the accounting year, relevant to the assessment year under appeal. May be that the assessee had surrendered Rs.50,000/- at the time of survey but if enquiries made by the ITO during the course of assessment proceedings, itself established that construction had taken place before the start of the accounting year under appeal, the assessee's action of surrendering any amount on account of cost of construction in the assessment year 1986-87 could have no meaning and, therefore, without going into the details on record which indicate that the assessee had asserted that the construction of the house had not been undertaken by him entirely but that the plots and the cost had been met by his brother and father also, I delete the addition retained by the first appellate authority.

9. The result would be that the entire addition of Rs.50,000/- would stand deleted from the assessment."

We have heard learned counsel for the revenue and perused the findings recorded.

The view taken by the Tribunal cannot be held to be perverse. The Tribunal has gone by the assumption by the revenue itself that construction took place upto 31.3.1985, while survey in question took place during the accounting year 1986-87. Even if two views are possible, the finding recorded cannot be held to be perverse so as to hold that deletion made by the Tribunal was not called for.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 21, 2006 (Rajesh Bindal)
'gs' Judge